

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Doug Bauman,

Complainant,  
vs.

PROBABLE CAUSE  
ORDER

House Republican Campaign  
Committee (HRCC),

Respondent.

The above-entitled matter came on for a probable cause hearing before Administrative Law Judge Richard C. Luis on November 5, 2004, by telephone. The hearing was held pursuant to Minn. Stat. § 211B.34, to consider a complaint filed by Complainant on November 1, 2004. On November 2, 2004, the undersigned ruled that the Complaint set forth a prima facie violation of Minn. Stat. § 211B.06, Subd. 1.

Appearing on behalf of Complainant was Alan Weinblatt, Weinblatt & Gaylord PLC, 111 East Kellogg Boulevard, Suite 300, St. Paul, MN 55101.

Appearing on behalf of Respondent was Paul Kohls, Rider Bennett LLP, 333 South Seventh Street, Suite 2000, Minneapolis, MN 55402.

Based on all the proceedings in this matter, the Administrative Law Judge finds that there is probable cause to believe that the violation of law alleged in the Complaint has occurred, for the following reasons:

**ORDER**

IT IS ORDERED:

1. That there is probable cause to believe that the Respondent violated Minn. Stat. § 211B.06, Subd. 1.

2. That this matter is referred to the Chief Administrative Law Judge for the scheduling of an evidentiary hearing.

Dated this 9th day of November, 2004

s/Richard C. Luis

RICHARD C. LUIS  
Administrative Law Judge

**MEMORANDUM**

On or about October 30, 2004, the HRCC mailed campaign literature to voters in at least four legislative districts, which literature indicated support by the local legislative candidate for Governor Pawlenty's policies on the sharing of Indian casino revenue with the state government. In at least four cases, the literature urged the voters to "Re-Elect \_\_\_\_\_ on November 2" in districts where the named candidate was not the incumbent. The Respondent admits that the literature creates the false impression that its candidates were incumbents, and admits that the literature was mailed at its expense.

The HRCC attributes the mailings to unintentional mistake and inadvertence on the part of the third party it contracted to print the literature. It adds that as soon as certain media outlets brought the false representations of incumbency to its attention, the Committee chair and other party leaders candidly acknowledged the mistaken representations. Respondent argues there was no more time available at that late stage of the campaign, before the election on Tuesday, November 2, to remedy the situation further.

The Complainant maintains that the mistakes should have been caught prior to mailing the literature, that the mistakes were too obvious to be passed off as inadvertent and that the Respondent did nothing (except to explain when confronted) to rectify the misrepresentations. He argues that the evidence is clear and convincing that the HRCC knew or should have known that the representations of an incumbency were false, or that the Respondent caused the false information to be communicated with reckless disregard of whether it was false.

The Complainant has met its burden to demonstrate that there is probable cause to believe that the Respondent represented falsely the incumbency of its legislative candidates in at least four races. The evidence points to a conclusion that the HRCC had an opportunity to correct the errors before they caused damage, and corrective action was not taken. The arguments raised by Respondent's counsel go largely to the weight of the violations or state mitigating circumstances, as opposed to challenging whether violations (false statements) were made. The gravity of the offenses are a matter for hearing before a three-judge panel. It is now up to the panel to decide whether clear and convincing evidence shows the false representations were made with the Respondent's knowledge or due to the Respondent's reckless disregard for the truth.

**R.C.L.**